MOHAMED v. KUNJI MOHIDIN

[A.C.J. (Abdul Aziz J.) February 21, 1966]

[K.L. — Civil Appeal No. 21 of 1965]

Land Laws — Trespass — Damages — Whether holder of licence can obtain damages for trespass.

The plaintiff was the holder of a temporary occupation licence of a small plot on a piece of land for a house site and also a licence to pluck coconuts from 34 trees on the land. Subsequently the defendant obtained a temporary occupation licence in respect of the same piece of land for the purpose only of rearing poultry. The defendant came on to the land and cut down 16 coconut trees, 4 rambutan trees, 4 jackfruit trees and 2 guava trees. The plaintiff was awarded $2,000 by way of damages for trespass in the Sessions Court and against this judgment the defendant appealed.

Held: the plaintiff had a valid licence to pluck coconuts from the trees and was therefore in possession and entitled to bring the action for trespass.

Cases referred to:—

(1) *Julaika Bivi* v. *Mydin* [1961] M.L.J. 310.

(2) *Senik* v. *Hassan* [1963] M.L.J. 368.

CIVIL APPEAL.

Nath for the appellant.

V. Oorjitham for the respondent.

Abdul Aziz J.: This is an appeal against the judgment of the president of the sessions court, Kuala Lumpur given on the 25th February 1965 awarding $2,000 as damages to the plaintiff for trespass to property.

The facts are fairly clear from the record. According to the record the dispute centred round a piece of State land measuring 1½ acres situated at Kepong on which both parties had diverse rights of possession. Evidence shows that in 1956 the plaintiff became the holder of a temporary occupation licence of a small plot on the land for a house site and had a valid licence for 1964. When the plaintiff became the holder of the licence there were already some fruit trees on the land including 73 coconut trees. In respect of these trees the plaintiff had also obtained a licence to pluck coconuts from 34 trees from 1961 and had a licence in 1964. Illegally, perhaps, in respect of the other fruit trees, the plaintiff was, in fact, enjoying the produce from the land in 1964 and for some years previously. In 1964 a temporary occupation licence was issued in respect of the same piece of land to the defendant for the purpose only of rearing poultry. According to the plaintiff some time in August 1964 the defendant came onto the land and cut down 16 coconut trees, 4 rambutan trees, 4 jackfruit trees and 2 guava trees, and caused other damage to his property. He, therefore, claimed $2,000 as damages for loss suffered by him. After hearing the evidence the learned president decided that since the defendant had no licence to cut down the trees and since there was no dispute as to the question of damages (which I took it meant that there was no dispute as to the quantum of damages) he gave judgment for the plaintiff of a sum of $2,000 by way of damages. Against that judgment the defendant has now appealed.

Several grounds of appeal were urged by the defendant/appellant, the main one being that the action was not maintainable as the plaintiff/respondent was in occupation by virtue only of a temporary occupation licence and, therefore, had no claim in respect of the cutting down of the trees. It was submitted that if there was any cause of action at all against the defendant, that cause of action was vested in the Government of the State of Selangor. Second, there was no evidence that the 34 coconut trees cut down by the defendant were in fact the coconut trees in respect of which the plaintiff had a licence to pluck the fruits.

The learned president did not deal with these two points specifically although I have no doubt he had them in mind i.e. whether or not an action for trespass is maintainable by the plaintiff and whether or not any damage resulted from the trespass.

Trespass is essentially an injury to possessory right. A person in possession has certain rights under the law as against a trespasser. In the case of *Julaika Bivi* v. *Mydin,*[1] Neal J. decided that the holder of a temporary occupation licence can maintain an action for ejectment against a trespasser. I have followed the reasoning in that case and I entirely agree with the hypothesis that possession for however short a period is sufficient to support an action for trespass against a wrongdoer. In the later case of *Senik* v. *Hassan & Anor.*[2] Suffian J. adopted a paragraph in *Halsbury's* Laws of England, 3rd edition, volume 38, paras 1212 and 1214 which is equally applicable in this case and that is —

> "Trespass is an injury to a possessory right. The plaintiff must have been in possession at the time of the trespass. Any form of possession, so long as it is clear and exclusive and exercised with the intention to possess, is sufficient to support the action. It is not necessary that the plaintiff's possession should be lawful and actual possession is good against all except those who can show a better right of possession in themselves."

On the evidence it is clear that apart from being in possession of a valid licence to occupy an area of 25′ x 60′ for the purpose of dwelling the plaintiff had a valid licence to pluck the coconuts from 34 trees. Apart from that there was evidence adduced, which was not rebutted in any way, that he has been plucking fruit from all the coconut trees and other trees for a number of years previous to that. As against the plaintiff's right the defendant had only a licence which conferred on him no right at all over the fruit trees. The plaintiff's right to possession, therefore, is on all fours with the passage above-quoted. It may well be that the plaintiff was

not in lawful possession of the other trees but that is immaterial as far as the defendant in this action is concerned. This action is, therefore, clearly maintainable by the plaintiff against the defendant for trespass. As there seemed to be no dispute on the facts as to trespass and the damage caused by the defendant and there is also no dispute in the pleading or on the evidence as to quantum I would defer from disturbing the finding of the learned president on that question.

The appeal will, therefore, be dismissed with costs.

Appeal dismissed.

Solicitors: *Eugene Lye & Co.; Oorjitham & Lam.*

SNG HUNG MENG v. PUBLIC UTILITIES BOARD

[F.C. (Wee Chong Jin C.J. (Singapore), Tan Ah Tah F.J. and Buttrose J.) February, 23, 1966]

[Singapore — Federal Court Civil Appeal No. Y1 of 1966]

Practice and Procedure — Writ issued in name of foreign sovereign — Validity of — Constitution and Malaysia (Singapore Amendment) Act, 1965, ss. 6, 7 and 8 — Courts of Judicature Act, 1964, s. 7 — Republic of Singapore Independence Act, 1965 — Position of High Court of Singapore after break-up from Malaysia.

Constitutional law — Sovereign state — High Court — Issue of Writs of Summons — Writ issued in name of foreign sovereign — Error fundamental to proceedings.

The plaintiff-appellant herein, on November 17, 1965, issued a specially indorsed writ for $11,900 overtime pay against the defendants. The mandatory part of the writ was in the form "The Honourable Dato' Wee Chong Jin, P.M.N., Chief Justice of Singapore in the name and on behalf of His Majesty the Yang di-Pertuan Agong". Singapore had become independent on August 9, 1965. The defendants-respondents herein, applied for the writ to be set aside on the ground of irregularity and on the ground *inter alia* that the writ was issued in the name of the Yang di-Pertuan Agong and not in the name of the Yang di-Pertuan Negara, the Head of State in Singapore. In the court below Chua J. held that the writ of summons should have been issued in the name of the Yang di-Pertuan Negara, the Head of State of Singapore, and as the writ in this case was issued in the name of a foreign sovereign, it was null and void.

On appeal to the Federal Court it was contended that the learned trial judge was wrong and submitted that the writ was properly issued in the name of the Yang di-Pertuan Agong but if not, the mistake amounted to a mere irregularity curable by an amendment.

Held: (1) section 6 of the Constitution of Malaysia (Singapore Amendment) Act 1965 has completely divested all sovereignty, jurisdiction, power and authority, executive or otherwise vested in the Yang di-Pertuan Agong of Malaysia in respect of Singapore, i.e. the totality of all his powers, sovereign or otherwise in respect of Singapore and vested them in the Yang di-Pertuan Negara of Singapore;

(2) until the legislature of Singapore after August 9, 1965 specifically enacts that this particular power vests in someone other than the Yang di-Pertuan Negara of Singapore, all writs of summons issued out of the High Court of Singapore must be issued in the name of the Yang di-Pertuan Negara of Singapore; a writ of summons issued out of the High Court of Singapore in the name of a sovereign of a foreign country commanding the appearance of a person before the High Court of Singapore is a bad writ amounting to a nullity unless there is a clear enactment by the legislature of Singapore enabling a writ of summons to be so issued;

(3) therefore the writ of summons in the present case was not a mere irregularity but was a nullity. The issue of a writ in the name of a foreign sovereign is an error fundamental to the whole proceedings.

FEDERAL COURT.

Dennis Murphy for the appellant.

Graham S. Hill for the respondent.

In the court below *Howard Cashin* appeared for the plaintiff and *Tan Cheng Guan* appeared for the defendant. On December 10, 1965 the following judgment was delivered:

Chua J.: On the 17th November, 1965, the plaintiff in this case issued a specially indorsed writ claiming "for $11,911 being overtime pay payable by the defendants to the plaintiff for work done and services rendered by the plaintiff to the City Council of Singapore and to the defendants as an employee of the said City Council and as an employee of the defendants." Particulars of the overtime were also set out in the statement of claim endorsed on the writ.

The mandatory part of the writ is in this form. "The Honourable Dato' Wee Chong Jin, P.M.N., Chief Justice of Singapore, in the name and on behalf of His Majesty the Yang di-Pertuan Agong....."

A copy of this writ was served on the defendants and they entered conditional appearance on the 2nd December, 1965.

On the 2nd December, 1965, the defendants issued a summons applying for the writ to be set aside for irregularity on the grounds:

(1) that the said writ was issued in the name and on behalf of His Majesty the Yang di-Pertuan Agong instead of the name of His Excellency the Yang di-Pertuan Negara contrary to section 7 of the Courts of Judicature Act, 1964 and section 6 of the Constitution and Malaysia (Singapore Amendment) Act, 1965 and

(2) that the plaintiff's claim as pleaded therein is not such as may properly be the subject of a specially indorsed writ under Order III rule 5 of the Rules of the Supreme Court 1934."

Taking the second ground of the defendants first. It was submitted that the statement of claim endorsed on the writ did not disclose a cause of action which comes within Order III rule 5 of the Rules of the Supreme Court 1934. I am of the view that there is no substance in this submission. The statement of claim discloses that it was a claim on a contract of service and was for a liquidated sum and is therefore a subject of a specially indorsed writ under Order III rule 5.

I now come to the first ground.